

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re U.S. Patent No. 7,396,897)	
)	
Issue Date: July 8, 2008)	Group Art Unit: 1796
)	
Inventor: Michel PHILIPPE et al.)	Examiner: Duc TRUONG
)	
Application No.: 10/821,914)	Conf. No. 2416
)	
Filed: April 12, 2004)	
)	
For: N- α - AND N- ϵ -LYSINE AND)	
ORNITHINE COMPOUNDS)	
COMPRISING A THIOL)	
FUNCTION AND COSMETIC)	
USE THEREOF)	

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues. The required fee of \$400.00 for the petition under 37 C.F.R. § 1.183 is enclosed.

The U.S. Patent Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,396,897 (the '897 patent) on July 8, 2008, with a patent term adjustment

(PTA) of 850 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in Wyeth v. Dudas that the USPTO had made an error in the manner it determined PTA. Specifically, the court's decision relates to situations in which separate time periods of PTA accrue due to PTO examination delay and those time periods do not overlap. The court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 31, 2008

By:

A handwritten signature in black ink, appearing to read 'M. D. Sweet', written over a horizontal line.

Mark D. Sweet
Reg. No. 41,469

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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USE THEREOF)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DETERMINATION OF PATENT TERM ADJUSTMENT - POST GRANT

The U.S. Patent and Trademark Office (USPTO) issued the subject U.S. Patent No. 7,396,897 (the '897 patent) on July 8, 2008, with a patent term adjustment (PTA) of 850 days. The application was filed on April 12, 2004. The USPTO reached the PTA of 850 days in view of a 850 day PTO delay to issue the first notification under 35 U.S.C. § 132 (dated October 10, 2007). See the Issue Notification dated June 18, 2008.

Thus, 272 days of USPTO delay accrued after the application had been pending for three years (after the mailing date of the Restriction Requirement to the issuance of the patent on July 8, 2008). Under the PTO's manner of calculating PTA, applicants were not provided those additional 272 days of PTO delay in the PTA.

Customer No. 22,852
U.S. Patent No. 7,396,897
Attorney Docket No. 05725.1286


In view of the decision of the Federal District Court for the District of Columbia in Wyeth v. Dudas on September 30, 2008, patentee submits it is entitled to a total patent term adjustment of 1,122 days which is the sum of 272 days of patent term adjustment due to exceeding three year pendency accrued at the time the patent issued and 850 days resulting from the 850 day PTO delay to issue the first notification under 35 U.S.C. § 132.

If there are any fees due in connection with the filing of this request, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 31, 2008

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Mark D. Sweet
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